COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 245 of 2001

(Old No. 234 of 1998)

National Insurance Company Ltd. …… **Appellant.**

Versus

Sunder Chand Ramola
and another. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 15-12-1997, passed in M.A.C. Petition No. 3 of 1996, Sundar Chand Ramola Vs. Dharamvir Singh Sajwan and another, by the Motor Accident Claims Tribunal Tehri Garhwal ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum Rs. 3.07,000/- along with interest @ 18% per annum in favour of the claimants-respondent no. 1 and his wife Smt. Balma Devi as against the Opposite Party No.2 – appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of quantum of compensation and on the findings on rash and negligent driving of the vehicle in question.

We have heard the learned counsel for the appellant-Mr. K.K.Shah and Mr. S.N. Babulkar, appearing on behalf of the respondents and have carefully gone through the entire material on record as well as the impugned judgment and ward.

The learned counsel for the appellant-Insurance Company submitted before us that the findings regarding quantum of compensation as well as rash and negligent driving recorded by

the learned Tribunal are not in accordance with law and are not based on record. The impugned judgment and award has not been challenged on any other ground before us.

As mentioned in the preceding paragraph, the only grounds on which the findings of the Tribunal have been challenged are regarding quantum of award and finding as to rash and negligent driving by the driver of the offending vehicle. This being the position before us, it is not expedient in the interest of justice to narrate the facts of the entire case. We have perused the impugned judgment and award. The learned Tribunal has framed three Issues in the case on the pleadings of the parties. Issue No. 1 related to rash and negligent driving of the driver of Taxi-Jeep No. U.P. 08/3448 resulting in the death of deceased Prakash Chand Ramola, son of the claimant-respondent no.1 in the motor accident occurred on 13.8.95 at 2 p.m. on Chamba-Mussoorie road near Chaukhal. Issue nos. 2 and 3 related to the relief sought by the claimant-respondent no.1. The learned Tribunal after hearing both the parties and considering the entire material before it, has found on Issue No.1 that the deceased died in the motor accident on 13.8.95 at 2 p.m. near Chaukhal on Chamba-Mussoorie road due to rash and negligent driving by the driver of taxi-jeep No. UP-08-3448. The Tribunal has based its findings on the documentary evidence as well as testimony of P.W.1, Sundar Chand, the claimant, and P.W.2, Ravi Chand, who had given ocular account of the motor accident in question resulting in the death of the deceased. P.W. 2 has stated on oath that he was coming by truck and the jeep in question was being driven in rash and negligent manner by its driver resulting its fall in the ***Dhangar*** near Chaukhal. This witness also saw that in the accident as many as five persons succumbed to their injuries on the spot. This witness along with the help of others brought the deceased at the hospital where he died as a result of injuries sustained by the deceased. P.W.3 Karamvir Singh has also stated that the deceased had boarded the jeep on 13.8.95 at about 1 to 1.30 p.m. after taking tea

at his shop. No oral or documentary evidence has been adduced on behalf of the Opposite Parties to controvert the testimony of these important witnesses. Thus, from the evidence of all these witnesses, we are of the consistent view that the accident in question was the result of rash and negligent driving. On Issue Nos 2 and 3, the learned Tribunal after considering the evidence on record found that the income of the deceased was Rs. 2000/-, which was supported by the evidence of Karamvir Singh Rana. The deceased was employed as driver by a Retired Commissioner Sri Singha. The salary certificate issued by Sri S.C. Singha dated 20.8.95 in on record. The driver was given facility of food, clothing and residence. On the record, the age of the deceased has been stated by the witnesses as 22-23 years and it has not been challenged by the O.Ps. by any evidence. The learned Tribunal taking the age of the deceased as 23 years has applied multiplier of 17 as per Second Schedule of Section 163-A of the Act and thus found the total income to be 4,08,000/-. Out of this amount, 1/3rd has been deducted towards personal expenses of the deceased. As such, the compensation has been determined at Rs. 3,05,000/. In addition, the Tribunal has awarded Rs. 2000/- general damages, etc. thereby awarded total compensation of Rs. 3,07,000/- as mentioned earlier. In our opinion, the conclusions arrived at by the learned Tribunal are fully supported by the evidence on record.

Now, coming to the argument of the learned counsel for the appellant challenging the quantum of compensation and findings of rash and negligent driving by the driver of the vehicle involved in the accident, law has been laid down by the Apex Court that it is not open for the Insurer to challenge the quantum of compensation and finding of negligence in appeal in the case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and other" (2003 (3) T.A.C. 293 (Supreme Court),*** we are of the opinion that there is limited scope for the Insurance Company to take defence under the provisions of the Act. In that case, it has been observed by the Apex Court that ***"even if no appeal is***

preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle." Therefore, the contentions challenging the quantum of award, etc. by the appellant-insurer have no merit and are liable to be turned down outright.

Thus, in any of view of the matter, We do not find any reason to interfere with the conclusions arrived at by the learned Tribunal and the judgment and award under appeal deserves to be upheld.

Accordingly, the appeal fails on merit and is liable to be dismissed.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP